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EXAMINER

MAYO, TARA L

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/935,351

Applicant(s)

COURTNEY, WILLIAM L.

Examiner

Tara L. Mayo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. All prior objections to the Specification as set forth in the last Office action (paper no. 5) mailed 09 September 2002 have been overcome by the response (paper no. 6) filed 16 December 2002.

2. The use of the trademark KEVLAR® has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Objections***

3. All prior claim objections as set forth in the last Office action (paper no. 5) mailed 09 September 2002 have been overcome by the response (paper no. 6) filed 16 December 2002.

4. Claims 6, 8, 15, and 20 are objected to because of the following informalities: minor grammatical error(s).

In claim 6 on both lines 3 and 4, change "including" to --includes--.

In claim 8 on line 3, delete "inflating" and insert therefor --inflates--.

In claim 15 at line 2, delete "having" and insert therefor --has--.

In claim 20 at line 3, delete "stated" and insert therefor --state--.

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Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. All prior rejections of the claims under 35 USC §112, second paragraph as set forth in the last Office action (paper no. 5) mailed 09 September 2002 have been overcome by the response (paper no. 6) filed 16 December 2002.

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 15 through 17 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Specification as originally filed fails to provide support for a bottom surface portion of the second end of the inflatable collar riding along a top surface portion of the first end until the collar is properly positioned for a neck size of a user, as set forth in claim 15.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Maness (U.S. Patent No. 4,324,234).

Maness '234, as seen in Fig. 4, shows a garment integrated multi-chambered personal flotation device (10) or life jacket comprising:

with regard to claim 1,

a garment member (12); and

a personal flotation device (30) attached to the garment member;

wherein said personal flotation device comprises an inflatable collar (col. 3, lines 28 through 38) associated with the garment member;

with regard to claim 13,

wherein said inflatable collar comprises:

a collar bladder (the interior of the collar); and

means for inflating the collar bladder (col. 3, lines 7 through 14 and lines 35 through 38); and

with regard to claim 14,

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said means for inflating comprising:

a compressed gas cylinder (col. 3, lines 7 through 14); and

a detonator (the "similar lanyard" per col. 3, lines 7 through 14).

10. Claims 3 through 11 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lehrer et al. (U.S. Patent No. 5,707,177).

Lehrer et al. '177, as seen in Figs. 1 and 6, show a garment integrated, multi-chambered personal flotation device comprising:

with regard to claim 3,

a garment member (2); and

a personal floatation device, as seen in Fig. 6, attached to the garment member;

wherein said personal flotation device comprises:

a first bladder (4);

a second bladder (4) associated with said first bladder;

a first mobile buoyant assembly (4) associated with said first bladder;

a second mobile buoyant assembly (4) associated with said second bladder; and

means for inflating (6, 12, and 16) said first bladder and said second bladder;

with regard to claim 4,

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wherein said first mobile buoyant assembly is in communication with said first bladder through a flexible tube (14);

with regard to claim 5,

wherein said means for inflating comprises:

a compressed gas cylinder (6); and

a detonator (16) in communication with said compressed gas cylinder (col. 3, lines 12 through 27);

with regard to claim 6,

wherein said first mobile buoyant assembly includes a third bladder (4) and said second mobile buoyant assembly includes a fourth bladder;

with regard to claim 7,

further including at least one cover member (22) for stowing said first bladder, said second bladder, said third bladder, and said fourth bladder in their deflated states;

with regard to claim 8,

wherein said means for inflating also inflates said third bladder and said fourth bladder;

with regard to claim 9,

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wherein said first bladder is attached to the garment member (col. 3, lines 6 through 11);

with regard to claim 10,

wherein said first bladder is attached to said garment member and said second bladder is attached to said garment member (col. 3, lines 3 through 11);

with regard to claim 11,

wherein said first bladder is attached to said second bladder (via element 31); and

with regard to claim 18,

a garment member (2);

a first bladder associated with the garment member (col. 3, lines 6 through 11);

a second bladder associated with said first bladder (via element 31);

a third bladder associated with said first bladder (via element 31);

a fourth bladder associated with said second bladder (via element 31); and

means for inflating (6, 12, and 16) said first bladder, said second bladder, said third bladder, and said fourth bladder.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:



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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lehrer et al.

(U.S. Patent No. 5,707,177) in view of Hällström (U.S. Patent No. 6,062,929).

Lehrer et al. '177 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claim 2,

the garment being body armor.

Hällström '929, as seen in Figs. 1 through 4, discloses a garment integrated multi-chambered personal flotation device comprising:

a garment member (1); and

a personal flotation device (collectively 34, 36, 38, and back portion of element 20)

attached to the garment member;

wherein said garment member is body armor (col. 3, lines 7 through 20).

With regard to claim 2, it would have been obvious to one of ordinary skill in the art of diving at the time of invention to modify the device claimed by Lehrer et al. '177 such that the

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garment member would be body armor as taught by Hällström '929. The motivation would have been to provide a flotation garment resistant to penetration by objects.

13. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lehrer et al. (U.S. Patent No. 5,707,177).

Lehrer et al. '177 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claim 12,

the first bladder being removably attached to the garment member.

With regard to claim 12, it would have been obvious to one of ordinary skill in the art of diving at the time of invention to modify the device shown by Lehrer et al. '117 such that the first bladder would be removably attached to the garment member. The motivation would have been to provide access to the bladder as desired. In re Dulberg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961).

14. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lehrer et al. (U.S. Patent No. 5,707,177) in view of Maness (U.S. Patent No. 4,324,234).

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Lehrer et al. '177 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claim 19,

the device further comprising an inflatable collar associated with the garment member.

Maness '234, as seen in Fig. 4, shows a garment integrated multi-chambered personal flotation device (10) or life jacket comprising:

a garment member (12); and

a personal flotation device (30) attached to the garment member;

wherein said personal flotation device comprises an inflatable collar (col. 3, lines 28 through 38) associated with the garment member to keep the head of the wearer out of the water if the wearer should become unconscious.

With regard to claim 19, it would have been obvious to one of ordinary skill in the art of diving at the time of invention to modify the device shown by Lehrer et al. '177 such that it would include an inflatable collar as taught by Maness '234. The motivation would have been to maintain an unconscious user's head above water.

15. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lehrer et al. (U.S. Patent No. 5,707,177) in view of Courtney (U.S. Patent No. 5,516,233).

Lehrer et al. '177 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claim 20,

an inflatable raft disposed in a deflated state between the garment member and a user wearing the garment member.

Courtney '233, as seen in Figs. 1 and 2, shows a personal flotation device (203) including a garment member comprising an inflatable raft (207) disposed in a deflated state between the garment member and a user wearing the garment member.

### ***Double Patenting***

16. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. §101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

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17. Claims 3, 4, and 5 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 3, 4, and 5 of copending Application No. 10/047,682. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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19. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of copending Application No.

10/047,682. Although the conflicting claims are not identical, they are not patentably distinct from each other because

the claimed “garment member” of the instant application is synonymous to the recited “body member” of the copending application; and

the claimed “personal floatation device” comprising an inflatable collar attached to the garment is synonymous to the “inflatable collar connected to the body member” of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Conclusion*

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hurt (U.S. Patent No. 2,742,654) shows an inflatable collar.

Walters (U.S. Patent No. 5,403,123) discloses an embodiment for a life jacket including a gas impermeable laminate.

Rodemann (U.S. Patent No. 6,080,027) shows a flotation device comprising multiple inflatable bladders in communication with one another.

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Butzer (U.S. Patent No. 6,109,338) shows a garment comprising a plurality of inflatable bladders.

Frank (U.S. Patent No. 6,128,784) shows a vest comprising multiple bladders.

Courtney et al. (U.S. Patent No. 6,203,246) disclose several embodiments for a personal flotation device.

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-3795 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

TLM  
5 March 2003



THOMAS B. WILL  
GROUP 3600  
SUPERVISORY PATENT EXAMINER